

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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THOMAS GESUALDI, LOUIS BISIGNANO, ANTHONY  
PIROZZI, DOMINICK MARROCCO, ANTHONY  
D'AGUILA, FRANK FINKEL, JOSEPH FERRARA,  
MARC HERBST, THOMAS CORBETT and DENISE  
RICHARDSON, as Trustees and Fiduciaries of Local 282  
Welfare, Pension, Annuity, Job Training, and Vacation and  
Sick Leave Trust Funds,

Plaintiffs,

-vs.-

GIACOMELLI TILE INC.,

Defendant.

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**APPEARANCES:**

**Cohen, Weiss and Simon LLP**

*Attorneys for the plaintiffs*

330 W. 42<sup>nd</sup> Street, 25<sup>th</sup> Floor

New York, NY 10036

By: Michael S. Adler, Esq. & Joseph J. Vitale, Esq., Of Counsel

**NO APPEARANCE:**

Giacomelli Tile Inc.

**SPATT, District Judge.**

On February 9, 2011, the Court referred this matter to United States Magistrate Judge William D. Wall for a report and recommendation as to the amount of damages, attorneys' fees, and costs to be awarded following the entry of a default judgment against the defendant Giacomelli Tile Inc. On August 18, 2011, Judge Wall issued a Report recommending that an order be issued directing the defendant to permit an audit of its books and records for the period from December 29, 2008 through June 30, 2011 within thirty days of the date the order is entered. If the defendant fails to submit to an audit of

**ORDER**

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its records within the specified time period, Judge Wall recommended that the Court issue an order awarding the plaintiffs:

- Unpaid contributions in the amount of \$119,249.33;
- Interest in the amount of \$26,333.24 through December 10, 2010, with additional per diem interest of \$58.81 from December 11, 2010 through the date of judgment;
- Additional interest as liquidated damages in the amount of \$26,333.24 through December 10, 2010, with additional per diem interest of \$58.81 from December 11, 2010 through the date of judgment; and
- \$4,088.00 and \$700.30 in attorneys' fees and costs, respectively

To date, there have been no objections filed to the Report.

In reviewing a report and recommendation, a court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. §636(b)(1)(C). "To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." Wilds v. United Parcel Serv., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003) (citing Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)). The Court has reviewed Judge Wall's Report and finds it be persuasive and without any legal or factual errors. There being no objection to Judge Wall's Report, it is hereby

**ORDERED**, that Judge Wall's Report and Recommendation is adopted in its entirety, and it is further

**ORDERED**, that the defendant is directed to permit an audit of its books and records within thirty days of the date this order is entered, and it is further

**ORDERED**, that the plaintiffs are given sixty days from the date that this order is entered to inform the Court whether the defendant has complied with the order, and, if

the defendant failed to submit to the audit within the specified time, the Court will enter an order awarding the plaintiffs damages as recommended in the Report.

**SO ORDERED.**

Dated: Central Islip, New York  
September 9, 2011

/s/ Arthur D. Spatt  
ARTHUR D. SPATT  
United States District Judge